



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-0402

DC

April 28, 2004

Robert B. Robbins
Shaw Pittman, LLP
2300 N Street, N.W.
Washington, DC 200037-1128

Re: Crescent Real Estate Equities Company
Incoming letter dated March 2, 2004

Act: 1934
Section: _____
Rule: 14A-8
Public
Availability: 4/28/2004

Dear Mr. Robbins:

This is in response to your letter dated March 2, 2004 concerning the shareholder proposal submitted to Crescent Real Estate by the Service Employees International Union. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.



04027884

Sincerely,

Martin P. Dunn

Martin P. Dunn
Deputy Director

Enclosures

cc: Steve Abrecht
Executive Director of Benefit Funds
SEIU Master Trust
1313 L Street, N.W.
Washington, D.C. 20005

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March 2, 2004

Office of the Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Shareholder Proposal of Service Employees International Union

Ladies and Gentlemen:

Our client, Crescent Real Estate Equities Company, a Texas real estate investment trust (the "Company"), has received from Service Employees International Union (the "Proponent") a shareholder proposal and supporting statement in the form attached to this letter as Exhibit A (the "Proposal") for inclusion in the Company's proxy statement and form of proxy for its 2004 Annual Meeting of Shareholders (the "Proxy Materials"). The Company believes that it properly may omit the Proposal from the Proxy Materials for the reasons discussed in this request letter.

On behalf of the Company, we respectfully request confirmation that the staff members of the Division of Corporation Finance (the "Staff") will not recommend any enforcement action to the Securities and Exchange Commission (the "Commission") if the Company excludes the Proposal from its Proxy Materials, in reliance on those provisions of Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), discussed below.

Pursuant to Rule 14a-8(j) under the Exchange Act, we have enclosed, on behalf of the Company, six (6) copies of this request letter and its attachments. As also required by Rule 14a-8(j), we are sending today a copy of this letter and its attachments to the Proponent as notice of the Company's intention to omit the Proposal from the Proxy Materials.

The Proposal

The Proposal urges the Board of Trust Managers (the "Board") of the Company to implement a comprehensive policy governing related party transactions that requires annual disclosure to the Company's shareholders, in a separate report, of certain information relating to each transaction between the Company and any executive officer or director of the Company.

Bases for Exclusion of Proposal from Proxy Materials

The Company believes that it properly may exclude the Proposal from the Proxy Materials pursuant to the following rules.

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1. Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal;
2. Rule 14a-8(i)(7) because the Proposal deals with a matter relating to the Company's ordinary business operations;
3. Rule 14a-8(i)(3) because the Proposal is vague and indefinite; and
4. Rule 14a-8(i)(3) because the Proposal contains statements that are false and misleading.

I. The Proposal Already Has Been Substantially Implemented (Rule 14a-8(i)(10))

The Company believes that the Proposal should be excluded from the Company's Proxy Materials pursuant to Rule 14a-8(i)(10) because, as described below, the Company already has substantially implemented the Proposal.

In reaching this determination, the Company has taken into account the Staff interpretations of Rule 14a-8(10), which establish that the Company may rely on that exclusion if the essential elements of the Proposal have been implemented, even if each and every element has not and will not be adopted. See, e.g., Johnson Controls, Inc. (available November 26, 2003); The Talbots Inc. (available April 5, 2002); and Texaco, Inc. (available March 28, 1991).

The Company's Compliance with Existing Regulatory Requirements Substantially Satisfies the Terms of the Proposal

The Company's common shares and preferred shares are listed for trading on the New York Stock Exchange (the "NYSE"), and the Company has registered these classes of shares under Section 12(b) of the Exchange Act, making the Company a "reporting company" and subject to the Commission's reporting and disclosure requirements for reporting companies.

As a result, the Commission regulates the Company's disclosures regarding related party transactions. Both the proxy rules and Form 10-K mandate that the Company disclose to the public the information required by Item 404 of Regulation S-K under the Securities Act of 1933, as amended (the "1933 Act"). This information is designed to elicit information about the relationships between the Company and any trust manager, executive officer or significant shareholder of the Company or of another company (for purposes of this discussion, these persons are collectively referred to as "management") with which the Company engages in transactions. Pursuant to Item 404 of Regulation S-K, the Company must disclose, subject to certain numeric thresholds, information about the following related party transactions or relationships, among others:

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- transactions between the Company and its management (including the nature and amount of such transaction, the specific relationships between the Company and its management, and the nature and amount of management's interest in the transactions);
- business relationships between the Company and other companies to which the Company makes, or from which the Company receives, payments for property and services of a minimum value if any member of the Company's management also holds a management position with the other company or otherwise has a significant interest in the transaction;
- business relationships between management of the Company and entities that are debtors of the Company; and
- business relationships between management and the Company's counsel or accountant.

The information required by regulation covers the factual and numeric information, carefully defined by the Commission's regulations, that is necessary and appropriate to permit shareholders to consider the extent to which, in the opinion of the shareholders, Company insiders are benefiting from their relationship with the Company. In fact, the instructions to Item 404 direct the Company to analyze the need for disclosure by focusing on the materiality of an insider's interest in a transaction that involves the Company. Specifically, Item 404 instructs the Company to determine materiality by considering "the significance of the information to investors" in light of the particular circumstances.

In addition, in coordination with, and with the approval of, the Commission, the NYSE recently promulgated rules that require a majority of the trust managers of the Company (and all of the members of the Audit Committee, the Governance Committee and the Compensation Committee) to satisfy the NYSE's definition of "independent." This definition limits the kinds of relationships that the Company's independent trust managers may have, and the types of transactions that they may engage in, with the Company or its affiliates. Under the NYSE rules, not only must the Company disclose in its proxy statement or annual report to shareholders the number of its trust managers that are independent, it also must disclose the manner in which it has determined their independence (a process that necessarily includes evaluation of the relationships between the trust managers and the Company). Similarly, the Commission has promulgated rules requiring all members of the Company's Audit Committee to be independent and setting up standards that a trust manager must satisfy if he or she is to qualify as "independent" under these rules.

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Through this regulation, the Company already is subject to comprehensive rules that govern disclosure of related party transactions, as defined by regulation, and require that this disclosure of related party transactions be provided annually to the Company's shareholders. As a result, the Company believes that the Proposal already has been substantially implemented.

The Company has Adopted Procedures and Rules of Conduct that Substantially Implement the Proposal

The Company historically has provided, in its annual proxy statement, information similar to that sought by the Proponent. In addition, the Company has adopted a number of policies, practices and procedures that address the issues raised by the Proposal. Through these mechanisms, the Company believes that it has substantially implemented the Proposal.

The Proposal seeks a "comprehensive policy governing related party transactions" that "requires annual disclosure in a separate report to shareholders" of specified information. The stated purpose of the Proposal is to make sure that the shareholders receive sufficient information to conclude independently that the Company has taken the steps necessary to ensure that any transaction between the Company and an executive officer or trust manager was "in Crescent's best interest and on arm's length terms."

As indicated in the preceding discussion, the Company provides information regarding related party transactions to its shareholders on an annual basis. In addition, the Company already has adopted policies governing related party transactions that apply not only to its senior executives and trust managers but also to its officers and employees. The Company has appointed committees of its Board of Trust Managers that, by their charters, are required to implement, oversee and review these policies, and that already have done so. For example:

- The Governance Committee, which is a Board committee composed solely of independent trust managers, has adopted a charter that includes detailed conflict of interest policies and procedures. Among other matters, the charter provides that "Each Trust Manager has both a fiduciary duty and a duty of loyalty to the Company and its shareholders and shall avoid actual or potential conflicts of interest..." The charter also requires each Trust Manager to report immediately to the Board any "actual or potential" conflict of interest that develops so that the Board may evaluate the situation. Further, if any "significant and potentially

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ongoing conflict," develops, the charter requires that the Trust Manager resign unless the conflict is resolved.¹

- In addition, the Company has adopted a Code of Business Conduct governing all trust managers, officers and employees of the Company that specifically addresses the issue of conflicts of interest.² Among other provisions, the Code of Business Conduct provides that "All employees, and all entities in which an employee is an officer or director or has a significant or controlling ownership interest, are expected to deal with the Company on an arm's-length basis. All transactions between the Company and any such employees or entities should be approved in advance by the Audit Committee and, when approved by the Audit Committee, should be promptly disclosed to the entire Board." The Code requires involvement of another committee of the Board, the audit Committee. Like the Governance Committee, the Audit Committee is composed solely of independent trust managers, and it is that committee that determines whether a conflict of interest exists and, if so, how the conflict is to be handled.
- When the Company created a new entity, Crescent Operating, Inc. ("Crescent Operating"), in 1997 to serve as tenant of certain of the Company's properties, and distributed shares of Crescent Operating to the Company's shareholders, the Company formed an Intercompany Evaluation Committee consisting solely of independent board members who were also independent of Crescent Operating, for the purpose of reviewing, analyzing and confirming or denying all material transactions between the Company and Crescent Operating. The Intercompany Evaluation Committee continues to meet to review and analyze new and ongoing transactions between the Company and Crescent Operating.

The number of related party transactions and relationships in which the Company participates has decreased steadily as the Company has worked conscientiously to eliminate these types of relationships. The Company's Board has reviewed all proposed related party transactions that would involve a member of senior management, a trust manager or other affiliate. In accordance with the company's Code of Business conduct, no such transaction has occurred or in the future will occur without approval of the Board or an appropriate Board

¹ The Governance Committee charter is available on the Company's web site at <http://www.crescent.com/invsrela/corpgov/cbc.asp>.

² The Company's Code of Business Conduct is available on the Company's web site at <http://www.crescent.com/invsrela/corpgov/cbc.asp>.

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committee consisting solely of independent trust managers. When the Board or a committee of the Board considered it appropriate, the Board or committee has obtained advice or reports of separate counsel, third-party analysts or investment bankers, and independent appraisals.

The Board or an appropriate independent Board committee also reviews all related party transactions at least annually in connection with its review and approval of the proxy statement. Although the Proposal states that shareholders cannot tell from the proxy disclosures whether the transactions were evaluated to "ensure they were ... on arm's length terms," the Company's proxy statement specifically states at the conclusion of its discussion of any related party transactions that "Management believes that the foregoing transactions are on terms no less favorable than those that could have been obtained in comparable transactions with unaffiliated parties."³

The Company takes seriously its obligation to act in the best interest of the shareholders, as evidenced by the policies and procedures it currently has in place and by its historical actions. The Company does not believe, however, that the Board could, in good conscience, recommend approval of the Proposal by shareholders. The scope of the Proposal is so broad that it is unclear, an issue that is discussed in more detail in Parts II and III of this letter. It contains no standard of reasonableness and seeks to micromanage the Company's operations (see the discussion in Part II). The amount of time necessary to comply with the Proposal's demands for a separate report relating to "each transaction" involving any trust manager or executive officer is likely to be very high for the reasons discussed below. In addition, the Committee does not believe that there is a need for a "separate report." The Company already discloses related party transactions, to the extent required by applicable rules and regulations, on an annual basis to the shareholders, and the time and expense involved in preparing and distributing a separate report are not, in the opinion of the Committee, warranted.

In determining whether or not the Company has "substantially implemented" the Proposal, the Staff has stated that the answer turns on whether the policies, practices, and procedures that the Company has implemented "compare favorably with the guidelines of the proposal." Release No. 34-20091 (August 16, 1983); Texaco, Inc. (available March 28, 1991). The Company is not required under Rule 14a-(i)(10) to "fully effect" the Proposal by

³ Although the language of the proxy refers to "Management's" belief, in line with general proxy statement usage, such statements can be included in the Company's proxy statement only based on a decision by the independent board members that related party transactions are "are on terms no less favorable than those that could have been obtained in comparable transactions with unaffiliated parties."

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implementing each and every element of the Proposal. The purpose of the Rule 14a-8(i)(10) exemption is to avoid requiring shareholders to consider matters on which management has already acted favorably. Release No. 34-12598 (July 7, 1976). As a result, the Staff has concluded that a proposal has been "substantially implemented" when the "essential elements" of the proposal have been implemented.

The Company has in place policies, practices and procedures sufficient to address the essential elements of the Proposal. It has both a Governance Committee Charter and a Code of Conduct that discourage related party transactions involving anyone associated with the Company and require reporting of any potential related party transaction and approval by the full Board or by a committee of the Board (either the Governance Committee or the Audit Committee) composed solely of independent trust managers. The full Board (a majority of whose members are independent) reviews, approves and monitors all related party transactions in connection with its review of the Company's annual proxy statement. The Company also has a record of working to eliminate any situation involving a conflict of interest.

As discussed in detail in Parts II and III of this letter, the Company believes that the scope of the disclosure requested is overreaching, vague and indefinite. The Commission has established rules governing the circumstances in which related party transactions must be disclosed, and the Company believes that disclosure of those matters should be sufficient.

For these reasons, the Company believes that it has implemented the essential elements of the Proposal, and that it properly may exclude the Proposal in accordance with Rule 14a-8(i)(10).

II. The Proposal Deals with a Matter Relating to the Company's Ordinary Business Operations (Rule 14a-8(i)(7))

The Proposal properly may be omitted pursuant to Rule 14a-8(i)(7), which allows a company to exclude shareholder proposals from its proxy materials "if the proposal deals with a matter relating to the company's ordinary course of business operations." Although the Proposal purports to address only policy-related matters, its scope in fact extends to matters relating to the Company's ordinary business and, therefore, is properly excludable.

The Staff has stated that the policy underlying the ordinary business operations exclusion is to "confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Proxy Release"). In the 1998 Proxy Release, the Staff also recognized that "certain tasks are so fundamental to management's ability to run a company on a day-to-day basis" that they are not proper subjects for shareholder proposals.

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Through the no-action process, the Staff has established a record of the types of matters that generally represent part of a company's ordinary business operations. Proposals that traditionally fall into this category include those that relate to hiring, promoting, managing and compensating a company's workforce. *See, e.g.,* ConAgra Foods, Inc. (available July 19, 2002); Wal-Mart Stores (available April 10, 1992); and Kohl's Corp. (available March 18, 1997).

The 1998 Proxy Release states that the excludability of a proposal under the "ordinary business" standard must be determined on a case-by-case basis based primarily on the nature of the proposal (whether, as a practical matter, the matter in issue could be subject to direct shareholder oversight) and the nature of the company to which it relates (whether the proposal seeks to "micro-manage" the company).

In the Proposal, Proponent purports to address policy concerns of the shareholders (specifically, (1) the issue of executive compensation and (2) the right of the shareholders to receive a communication from the Company containing disclosures regarding "related party transactions" at least annually, but the scope of the Proposal extends beyond these policy concerns to address ordinary business matters. By requesting that the Company's Board of Trust Managers annually disclose "in a separate report to shareholders" specified information relating to "each transaction between ... [the Company] and any executive officer or director," the Proposal seeks to micro-manage the Company and seeks to obtain information about ordinary business operations of the Company (specifically, information relating to ordinary matters of compensation). Although the Proposal limits its request to members of senior management and the Company's "directors" (presumably, intended to be a reference to the Company's "trust managers") in an attempt to fall within the series of no-action letters that provide that the compensation of executive officers is a policy issue rather than a part of company's ordinary operations, the Proposal fails to achieve this goal for the reasons discussed below.

In addition, as discussed in more detail below, it is well-established that a proposal that relates even in part to ordinary business matters may be excluded in its entirety even though the proposal also addresses matters outside the scope of the Company's ordinary business operations.

The Proposal is not Limited to Matters of Executive Compensation

The Staff has recognized that matters relating solely to "executive compensation" cannot be considered "ordinary business" matters excludable under Rule 14a8(i)(7). *See* Reebok International Limited (March 16, 1992) (stating that proposals relating to senior executive compensation can no longer be considered matters of ordinary business). The Proposal seeks to fall within this exception to the ordinary business operations exclusion by focusing on the

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compensatory nature of transactions between the Company and “each executive officer or director.”

The disclosures that the Proponent seeks in a separate annual report to be made to the shareholders all relate in one form or another to disclosure relating to the differences between any transaction with a Company insider and a transaction with an unrelated party. The Supporting Statement that is part of the Proposal then clarifies the principal concern behind the request for an annual report. “Related party transactions ... create a risk that the insiders may benefit themselves at the company’s expense...” The reference to the “benefit” to the insiders at the “expense” of the Company clarifies that, in the view of the Proponent, insiders are likely to receive what amounts to “compensation” when they enter into a transaction with the Company. Item 404 of Regulation S-K under the Securities Act of 1933, as amended (the “Securities Act”), supports this view by noting that a “benefit” to an executive officer that falls within the scope of Item 404 also may properly be reportable under Item 402 of Regulation S-K, as executive compensation.

Although proposals relating solely to “executive compensation” may not be excluded under Rule 14a-8(i)(7) as ordinary business matters, the Staff has continued to allow the exclusion of proposals relating to “general compensation issues” (those matters not solely restricted to “senior executive compensation”). See, e.g., Ascential Software Corporation (available April 4, 2003); Lucent Technologies Inc. (available November 6, 2001); and Minnesota Mining and Manufacturing Co. (available March 4, 1999). The Proposal exceeds the limits that would prevent the Company from excluding it under Rule 14a-8(i)(7) because it asks for information not only about transactions with the Company’s executive officers but also about transactions with the Company’s trust managers, all but three of whom are “independent” under applicable Commission and New York Stock Exchange (“NYSE”) rules.

The Proposal Relates to General Shareholder Communications Procedures

The Company also believes that the request for a separate report, with a separate distribution to shareholders, violates Rule 14a-8(i)(7) in that it relates to ordinary business operations of the Company (specifically, the scope of the information required and the Company’s right to determine, subject to applicable law, when, how and to what extent it wishes to communicate with its shareholders). These portions of the Proposal properly can be excluded. When portions of a proposal properly may be excluded on a basis other than Rule 14a-8(i)(10), the Company need only establish that it has substantially implemented the remainder of the proposal. See Exxon Corp. (available February 28, 1992). Even if these portions of the Proposal are not excluded, the Company has substantially implemented the Proposal because it has implemented the essential elements of the Proposal.

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The Proposal seeks to dictate the manner in which the Board of Trust Managers of the Company will communicate with shareholders with regard to related party transactions. Thus, even if the Proposal were not excludable, for the reasons discussed above, the Proposal would be excludable under Rule 14a-8(i)(7) because it also relates to procedures for communicating with shareholders, which consistently has been viewed as part of a company's ordinary business operations. See, e.g., Advanced Fibre Communications, Inc. (available March 10, 2003); PeopleSoft, Inc. (available March 14, 2003); and Chevron Corp. (available February 8, 1998). It has been clearly established that the Company is entitled, as part of its ordinary business operations, to determine the means by which it will communicate with its shareholders and the times at which it will do so.

The Company already reports to its shareholders on an annual basis, in its annual proxy statement, on transactions between the Company and its executive officers and trust managers. The information about these matters complies with existing Commission rules on the topic. In addition, the Company's periodic reports on Form 10-Q and Form 10-K contain information about transactions between the Company and its executive officers and trust managers. Both the proxy statement and all of its periodic reports are available to the Company's shareholders on the Company's web site.

The Proposal Seeks to "Micro-Manage" the Company

Even if the Proposal were viewed as relating solely to policy issues, the Company still is entitled to exclude the Proposal under Rule 14a-8(i)(7). The Staff has made it clear that a proposal may be excluded pursuant to Rule 14a-8(i)(7) if the proposal seeks to "micro-manage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment," listing as an example a situation in which a proposal "seeks intricate detail." Release No. 34-40018 (May 21, 1998). The Proposal is this type of properly excludable proposal.⁴

⁴ By requesting disclosure of "each transaction" between the Company and any executive officer or director, the Proposal seeks excessive and intricate detail regarding complex matters about which shareholders as a group are not in a position to make an informed judgment at the annual meeting.

For example, the Company reimburses its trust managers for their reasonable, out-of-pocket expenses incurred in connection with their service on the Board, such as travel expenses and costs of food and accommodations while away from home to attend a Board or committee meeting. Payment or reimbursement of a trust manager's expenses and payment of meeting fees constitute transactions between the Company and the trust manager. The first is not required to be disclosed under the proxy rules, and the second is disclosed annually in the Company's proxy statement.

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Because the Proposal Fails to Limit the Nature of the Communication Sought to Other Than Ordinary Business, It May Be Excluded

It is well-settled that a proposal that relates even in part to ordinary business matters may be excluded in its entirety, even though the proposal also addresses matters outside the scope of the Company's ordinary business operations. Recently, the Staff again addressed this issue in its report entitled "Review of the Proxy Process Regarding the Nomination and Election of Directors" (the "Proxy Process Report") (available July 15, 2003).

In the Proxy Process Report, the Staff used examples of the actions taken in response to prior no-action requests seeking to exclude a shareholder proposal on the grounds that the proposal dealt with the company's ordinary business operations to clarify the extent to which the proposal may be excluded. Specifically, the Staff cites two no-action requests relating to two proposals that were held to violate Section 14a-8(i)(7) because the proposals in issue "did not limit the nature of the communications to other than ordinary business. Proxy Process Report at Note 55 (citing Advanced Fibre Communications, Inc. (available March 10, 2003) and PeopleSoft, Inc. (available March 14, 2003)). The Staff contrasted these proposals with another in which the proposal limited the nature of the communications with shareholders "to other than ordinary business matters." Proxy Process Report at Note 53 (citing The Kroger Co. (available April 11, 2003)).

The positions taken in these letters and referenced by the Staff in the Proxy Process Report conform to the Staff's historical position on this aspect of Rule 14a-8(i)(7). The Staff consistently has taken the position that a proposal may be excluded in its entirety if part of the proposal relates to ordinary business even when the remainder of the proposal relates to matters other than ordinary business. See, e.g., E*Trade Group, Inc. (available October 31, 2000) (granting no-action relief to exclude an entire proposal where two out of four of the mechanisms suggested therein implicated ordinary business matters); Associated Estates Realty Corp. (available March 23, 2000); ConAgra Foods, Inc. (available July 19, 2002); M&F Worldwide Corp. (available March 29, 2000); The Warnaco Group, Inc. (available March 12,

Footnote continued from previous page

The scope of the disclosure that the Proposal requires for the executive officers falls even more clearly into the category of "ordinary business operations" notwithstanding that the Proposal limits this information to executive officers. The Proposal would require reports of all reimbursements of travel expenses and other reasonable out-of-pocket expenses that the executive officers incur in performing their assigned responsibilities, since those expenses vary from executive officer to executive officer.

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1999); Wal-Mart Stores, Inc. (available March 15, 1999); Kmart Corporation (available March 12, 1999); and Z-Seven Fund, Inc. (available November 3, 1999).

Because the Proposal relates to ordinary business, the Company is entitled to exclude the entire Proposal in accordance with Rule 14a-8(i)(7).

III. The Proposal is Vague and Indefinite and Should Be Excluded (Rule 14a-8(i)(3) and Rule 14a-9)

Rule 14a-8(i)(3) allows a proposal to be omitted if the proposal or its supporting statement is contrary to the proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff has consistently taken the position that shareholder proposals that are vague and indefinite are excludable under Rule 14a-8(i)(3) as inherently misleading because neither the company's shareholders nor its board of directors would be able to determine, with any reasonable amount of certainty, what action or measures would be taken if the proposal were implemented. See, e.g., Eastman Kodak Company (available March 3, 2003); General Electric Company (available January 23, 2003); Alcoa Inc. (available December 24, 2002); Bristol-Myers Squibb Co. (available February 1, 1999); Archer-Daniels-Midland Company (available June 21, 1991); and Ford Motor Co. (available February 26, 1980). In voting on the Proposal, one shareholder may believe that approval of the Proposal will produce a result that is wholly different than the result the Proponent anticipates or that the Board understands to have been approved.

There also is judicial precedent consistent with this standard for excludability. See, e.g., Dyer v. Securities and Exchange Commission, 287 F.2d 773, 781 (8th Cir. 1961) (upholding exclusion of a proposal that is "so vague and indefinite" that neither the board nor the shareholders would be able to understand what the proposal would involve) and NYC Employees' Retirement System v. Brunswick Corp., 789 F. Supp. 144, 146 (S.D.N.Y. 1992) (stating that shareholders are entitled to know precisely what constitutes the scope of any proposal on which their vote is requested).

The Proposal is vague and indefinite in that it fails to:

- define critical terms;
- provide guidance on the generic terms and concepts that the Proposal identifies as part of the policy to be adopted by the Board of Trust Managers; and
- provide guidance as to whether the "comprehensive" policy to be adopted is solely that specified in the Proposal.

More specifically, the Proposal is vague and indefinite in the following fundamental respects.

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1. The Proposal urges the Board to implement a “comprehensive policy governing related party transactions that requires annual disclosure” The Proposal does not indicate what would be included in such a “comprehensive policy” that is not already included in the Company’s Code of Conduct and other policies, and the Company is unable to speculate about what such a policy would cover.
2. The Proposal does not specify what is intended by the requirement of a “separate report.” Can the report be included in other information already supplied to shareholders, such as the proxy statement, but under a separate heading, or must it be a separate document?
3. The Proposal does not specify what type of distribution of the separate report is anticipated. The Proposal states only that “annual disclosure in a separate report to shareholders” must be made. Is it sufficient to post the information to the Company’s web site or is a separate mailing, in which street name holders will be required to forward the information to beneficial owners, required?
4. The Proposal purports to require that the report provide specified information about “each transaction” between the Company and any executive officer or trust manager of the Company. As discussed in Part II, the use of the phrase “each transaction” is so vague and indefinite that it is not possible for the Company to determine how to comply with the disclosure sought by the Proposal. Accordingly, the matters that the Proponent, each shareholder voting on the Proposal, and the Board anticipate will be disclosed could be so different as to affect dramatically the scope of the report sought by the Proposal.

In fact, the Proposal is no less vague and indefinite than proposals that the Staff has permitted issuers to exclude in their entirety in the past year. See, e.g., Otter Tail Corporation (available January 12, 2004); Capital One Financial Corporation (available February 7, 2003); and General Electric Company (available February 5, 2003). Further, the Supporting Statement contained within the Proposal provides little, if any, interpretive guidance as to the intention of the vague and indefinite language of the shareholder resolution to be voted upon under the Proposal.

Although the Proponent and the shareholders are entitled to expect the Compensation Committee to act reasonably in interpreting any vague or indefinite provision in the Proposal, the many vague and indefinite provisions in the Proposal makes it potentially misleading to the Company’s shareholders on an overall basis and, therefore, justifies the exclusion of the entire

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Proposal. The Staff traditionally has permitted the exclusion of an entire proposal if, as is the case with the Proposal, "it is unclear exactly what action any shareholders voting for the proposal would expect the company to take" or if "it is unclear what action the company would be required to take if the proposal were adopted." See, e.g., Occidental Petroleum Corp. (available February 11, 1991). In addition, the Staff has made it clear that a proposal "that will require detailed and extensive editing in order to bring ... [it] into compliance with the proxy rules" may justify the exclusion of the entire proposal. See Division of Corporation Finance: Staff Legal Bulletin No. 14 (published July 13, 2001) ("Staff Legal Bulletin No. 14"). Because the Proposal is vague and indefinite, the Company's reasonable efforts to implement the Proposal may contravene the intentions of the shareholders that voted for the Proposal. . See, e.g., Puget Energy, Inc. (available March 7, 2002); IDACORP, Inc. (available September 10, 2001); Revlon, Inc. (available March 13, 2001); Jos. Schlitz Brewing Company (available March 21, 1977). The Company believes, therefore, that the Proposal properly should be excluded under Rule 14a-8(i)(3).

IV. The Proposal Contains Statements that are False and Misleading (Rule 14a-8(i)(3) and Rule 14a-9)

The Proposal contains numerous statements that are false and misleading. In Staff Legal Bulletin No. 14, published on July 13, 2001, the Staff discusses the rationale for permitting exclusion of shareholder proposals that will "require detailed and extensive editing in order to bring them into compliance with the proxy rules." An editing process of this type is time-consuming for the Staff, which has only limited resources. In addition, Staff Legal Bulletin No. 14 points out that a requirement that the Staff spend time even reviewing shareholder proposals with "obvious deficiencies in terms of accuracy, clarity or relevance" does not improve the process or benefit the majority of those participating in the proxy process. It simply "diverts resources" away from analyzing the principal, or core, issues under Rule 14a-8.

The Proposal also makes several assertions that are phrased as factual statements but actually represent the Proponent's own opinion, which the Proponent has not substantiated. The Staff consistently has taken the position that presenting an opinion as a fact is misleading and impermissible under Rule 14a-9. See, e.g., Dillard's Inc. (available March 10, 2003); General Electric Company (available January 24, 2003); Tyco Int'l Ltd. (available December 16, 2002).

In the first paragraph of the supporting statement, the Proponent states that related party transactions may "inflate earnings or distort financial results." The Proponent provides no explanation of how this is possible nor any mention of the fact that any such inflation or distortion would itself violate various Commission rules prohibiting false and misleading statements or the omission of information, without which, another statement is false and misleading. The statement also contains the false and misleading implication that the Company has engaged in related party transactions that have had the effect of inflating earnings or

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distorting financial results. The Company believes that this entire statement should be removed.

Also in the first paragraph of the supporting statement, Proponent's reference to a "2002 report by The Corporate Library" requires a more precise reference in order that shareholders may verify the statement cited, and the reference should be limited to the particular section of the report that supports the statement cited. In addition, the quoted statement indicates that the existence of any related party transaction represents poor governance and lack of independent oversight. Given the wide range of perfectly appropriate transactions with management that are required in the normal course of any company's business, this statement is clearly false and misleading. Further, as demonstrated by the discussion in Part II above, all of the related party transactions involving the Company have been approved by the independent trust managers and are monitored by them. Accordingly, the quote should be omitted.

In the second paragraph of the supporting statement, the Proponent states that "Crescent has extended 7 loans to board members, officers, and, in one case, an officer's spouse..." This statement is materially misleading because, although it is true that Theresa E. Black is the spouse of another officer, she also is herself an officer of the Company as was clearly indicated in the heading of the section in which the disclosure appeared, "Loans to Officers for Exercise of Options and Plan Unit Options." Ms. Black is the Company's Vice President, Tax. The Proponent, however, has written in its supporting statement only that Ms. Black is an officer's spouse, suggesting that Ms. Black is unaffiliated with the Company and that the Company made a loan to Ms. Black solely because of her position as "an officer's spouse." This phrasing is disingenuous at best and intentionally misleading at worst. The suggestion that Ms. Black received a loan from the Company because she is the wife of an officer of the Company, and not because of her own status within the Company, is false and materially misleading.

In the third paragraph of the supporting statement, the Proposal states that "shareholders cannot tell from the bulk of Crescent's related party transaction disclosures whether the transactions were evaluated to ensure they were in Crescent's best interest and on arm's length terms." This statement is inaccurate because the Company's proxy statement specifically states at the conclusion of its discussion of any related party transactions that "Management believes that the foregoing transactions are on terms no less favorable than those that could have been obtained in comparable transactions with unaffiliated parties." Accordingly, the statement is materially misleading and should be revised or eliminated.

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V. Conclusion

For the foregoing reasons, we respectfully request that the Staff concur in our opinion that the Proposal may be properly omitted from the Proxy Materials and confirm that it will not recommend any enforcement action if the Proposal is omitted from the Proxy Materials.

The Company presently expects to file its definitive Proxy Materials with the Commission on or about April 30, 2004. Accordingly, the Company requests that the Staff grant a waiver from the requirement of Rule 14a-8(j) that this letter be submitted to the Staff and the Proponent not less than 80 calendar days before the Company expects to file its definitive Proxy Materials with the Commission. The Company is requesting this waiver in order to allow time for printing and mailing of the Proxy Materials and still retain a solicitation period of at least 45 days. The Company's common shares are primarily held in "street name" through various brokers on behalf of the beneficial owners. The Company believes that a shorter solicitation period will not allow sufficient time for the majority of the beneficial owners to receive the Proxy Materials, consider the proposals, and submit their proxy or make arrangements to attend the 2004 Annual Meeting in person. If the Staff requires the Company to include the Proposal, the longer solicitation period is even more important because the brokers will not have authority to vote the shares of a beneficial owner on the Proposal. Only the beneficial owner will have the right to vote on the Proposal, and the Company expects to recommend a vote against the Proposal. For these reasons, it will be difficult for the Proponent to obtain the vote required to approve the Proposal unless the solicitation period is longer than the approximately 30 days available without the waiver or the 10 days permitted under state law. In addition, permitting the Company to file its definitive 2004 Proxy Materials by April 30, 2004 will permit the Company to save its shareholders the expenses that the Company otherwise will incur as a result of the need to prepare and file an amendment to its Form 10-K for the year ended December 31, 2003, in addition to preparing, filing and distributing its Proxy Materials. The Company therefore respectfully requests that the Staff waive the 80-day requirement of Rule 14a-8(j) by permitting the Company to file its definitive Proxy Materials 59 days after the date of this letter.

If you have any questions with respect to the foregoing or if you need any additional information, please do not hesitate to telephone me at 202.663.8136. If for any reason the Staff does not agree with the conclusions expressed herein, we would appreciate the opportunity to confer with the Staff before issuance of its response.

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Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Robert B. Robbins" followed by a stylized flourish or initial.

Robert B. Robbins

Enclosures

cc: Anna Burger, International Secretary-Treasurer of Service Employees International Union

Document #: 1380981 v.7

SHAREHOLDER RESOLUTION

RESOLVED, that shareholders of Crescent Real Estate Equities, Inc. ("Crescent" or "the Company") urge the Board of Trust Managers to implement a comprehensive policy governing related party transactions that requires annual disclosure in a separate report to shareholders of the following information regarding each transaction between Crescent and any executive officer or director:

- a. Whether the Board considered or approved it
- b. Whether the Board determined whether the transaction involves terms different from those that would likely be negotiated with clearly independent parties;
- c. The basis on which any determination described in subpart (b) was made; if a fairness opinion or similar appraisal was relied upon, a brief description of the valuation methodology should be provided; and
- d. If a transaction involves an ongoing relationship, whether the Board or any other entity will periodically review the relationship to determine whether it is still in the best interest of Crescent and how often review will occur.

SUPPORTING STATEMENT

Related party transactions—transactions between a company and its insiders—create a risk that the insiders may benefit themselves at the company's expense by causing the company to engage in transactions that are not on arm's length terms. They may also inflate earnings or distort financial results. (See AICPA Practice Alert 95-3) A 2002 report by The Corporate Library highlighted the governance risks of such transactions, stating that they "demonstrate at best insensitivity to the importance of objective, independent oversight from directors and at worst, a blurring of the lines between personal and corporate assets that makes effective oversight impossible."

Crescent has engaged in numerous related party transactions in recent years. For example, according to Crescent's 2003 proxy statement, the Company has extended 7 loans to board members, officers, and, in one case, an officer's spouse, totaling over \$35 million. In addition, between 1997 and 2002, Crescent took part in multiple transactions with now bankrupt COPI, an entity established by Crescent in 1997 to engage in businesses that Crescent was unable to enter under then-existing federal income tax laws applicable to REITs. Until February of 2002, Crescent CEO John Goff and Crescent Chairman Richard Rainwater were members of COPI's board and, at the time Mr. Goff and Mr. Rainwater resigned from COPI's board, COPI owed Crescent \$76.2 million.

Shareholders cannot tell from the bulk of Crescent's related party transaction disclosures whether the transactions were evaluated to ensure they were in Crescent's best interest and on arm's length terms. We believe that shareholders should receive such information, which will assist them in monitoring Crescent's board and management.

For these reasons, we encourage shareholders to vote FOR this proposal.

DIVISION OF CORPORATION FINANCE INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

April 28, 2004

Response of the Office of Chief Counsel
Division of Corporation Finance

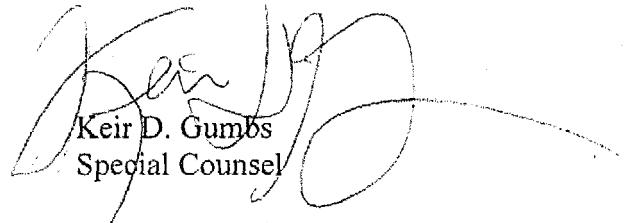
Re: Crescent Real Estate Equities Company
Incoming letter dated March 2, 2004

The proposal urges the board of trust managers to implement a comprehensive policy governing related party transactions that requires annual disclosure to Crescent Real Estate's shareholders of certain information relating to each transaction between the Company and any executive officer or director.

There appears to be some basis for your view that Crescent Real Estate may exclude the proposal under rule 14a-8(i)(7), as relating to Crescent Real Estate's ordinary business operations (i.e., reporting on transactions related to Crescent Real Estate's ordinary business operations). Accordingly, we will not recommend enforcement action to the Commission if Crescent Real Estate omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which Crescent Real Estate relies.

We note that Crescent Real Estate did not file its statement of objections to including the proposal at least 80 days before the date on which it will file definitive proxy materials as required by rule 14a-8(j)(1). Noting the circumstances of the delay we do not waive the 80-day requirement.

Sincerely,



Keir D. Gumb's
Special Counsel